

JOSEPH & KIRSCHENBAUM LLP

Attorneys at Law

Charles Joseph
D. Maimon Kirschenbaum
Denise Schulman
Josef Nussbaum
Lucas C. Buzzard

32 Broadway, Suite 601
New York, NY 10004
Phone (212) 688-5640
Fax (212) 688-2548
www.jk-llp.com

January 12, 2021

VIA ECF

Hon. John G. Koeltl, U.S.D.J.
United States District Court
Southern District Of New York
500 Pearl St.
New York, NY 10007-1312

Discovery stayed pending the conclusion of mediation.
SO ORDERED.

January 14, 2021
New York, NY

/s/ John G. Koeltl
John G. Koeltl
U.S.D.J.

**Re: Shinji Ujiie v. New Life Sushi, Inc., et al., Docket No. 19-cv-10996
(JGK)(DCF) – Letter Requesting Defendant Appear for Deposition.**

Dear Judge Koeltl:

We represent Plaintiff Shinji Ujiie in this matter. We respectfully write to request that this Court order Defendant Zhong Shen Shi a/k/a Seki (“Defendant Seki”) to appear for deposition before the parties attend a mediation, to which this Court recently referred the parties.

On January 8, 2021, Defendants unilaterally requested that the Court order the parties to mediation. (Dkt No. 30). On January 11, 2021, Plaintiff opposed this request on the grounds that the parties had already attended a mediation previously, that Plaintiff preferred to go to mediation after discovery was completed, and that there was no need to delay discovery to explore settlement possibilities because Plaintiff has been open to settlement discussions throughout this case, but Defendants had repeatedly refused to engage them in settlement discussions (while simultaneously demanding that the parties go to mediation). (Dkt. No. 31). In addition, Plaintiff requested that the Court order Defendants to comply with Plaintiff’s Notices of Deposition and to make themselves available to be deposed immediately. (Dkt. No. 31). This Court then granted Defendants’ request and referred this case to mediation. (Dkt. Nos. 32, 33). However, this Court did not stay discovery or otherwise pause this litigation.

Plaintiff now requests that this Court order Defendant Seki to make himself available for deposition before the parties attend the Court ordered mediation. There are material facts in dispute regarding inconsistencies in Defendants’ own business records. These inconsistencies in the record were present at the failed mediation the parties attended prior to litigation and have not been resolved or explained under oath (or otherwise). Attending the upcoming mediation with the same record as that which was evaluated at the previous mediation ensures the same failed result. Deposing Defendant Seki is essential for Plaintiff, and the parties, to effectively develop the record such that the parties can clearly evaluate the real strengths and weaknesses of their case, and to prevent them from just relying on the same unsubstantiated narratives that dictated the failed outcome of the prior mediation.

Furthermore, Defendants' request to this Court to refer this case to mediation was made in a clear attempt to avoid having to answer questions about these discrepancies under oath. Plaintiff's counsel had made at least three requests over the past month for Defendants to provide to dates for their depositions. Every time Defendants simply refused. Plaintiff's counsel had repeatedly communicated to Defendants' counsel that Plaintiff was entitled to take Defendants' depositions and that Plaintiff would not agree to go to mediation until these depositions were complete. The last time Plaintiff requested that Defendants comply with the previously served Notices of Deposition was January 8, 2021. Defendants did not respond (and have not responded since). Instead, a few hours later, Defendants filed their unilateral letter request to go to mediation. Defendants are attempting to use this Court's referral to mediation to protect them from having to testify under oath about central issues in this case. This Court should not sanction Defendants' refusal to participate in discovery and unilateral approach to this Court's dispute resolution procedures.

Plaintiff respectfully requests that this Court order Defendant Seki to appear for deposition prior to the Court ordered mediation.

We thank the Court for its consideration of this matter.

Respectfully Submitted,

/s Michael DiGiulio
Michael DiGiulio
32 Broadway, Suite 601
New York, NY 10004
Tel: 212-688-5640
Fax: 212-688-2548

Attorney for Plaintiff